ANTHONYAMAH ANTHONY & ORS.

v.

SOCFIN CO. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING MOTION NO. R8-32-134-88]
12 DECEMBER 1990

LABOUR LAW: *Employment - Withdrawal of union as a party to trade dispute - Whether Industrial Court has jurisdiction to substitute an individual in place of trade union - Section 29(a) Industrial Relations Act 1967.*

CIVIL PROCEDURE: *Whether Industrial Court committed error of law in interpreting the Industrial Relations Act - Whether substitution of parties altered the character of the dispute from a reference under s. 23 (now s. 26) to that of a reference under s. 20 - Industrial Relations Act.*

WORDS AND PHRASES: *Meaning of the word "party" - Section 2 Industrial Relations Act 1967*

The respondent company issued notices on 30 August 1985 to its employees to vacate their old labour lines to occupy their new houses by 30 September 1985. Upon the refusal of the applicants and several others to comply with the notice the company was forced to take drastic action which included removal of the creche facility, cut off the water supply and stoppage of the services of the linesweeper.

The applicants and affected employees did not report for work on 2 October 1985 and on 17 October the applicants were informed by the respondent company that as they had not reported for work for more than two days their contracts of employment were terminated.

The applicants were represented by their union (NUPW) at the trade dispute which was subsequently referred to the Industrial Court by the Minister pursuant to s. 26(2) of the Industrial Relations Act (the Act). NUPW had by a letter to the Industrial Court dated 4 May 1987 notified the Court that it could not represent the applicants as they were not its members by virtue of a ruling made by the Registrar of Trade Unions dated 21 August 1986. The Registrar had ruled that the applicants ceased to be members of NUPW by their refusal to work on 2 October 1985 which amounted to participation in an illegal strike.

The Counsel for the respondent company submitted that the dispute referred by the Minister under s. 26(2) of the Act involved NUPW and the respondent company as parties. Therefore when NUPW withdrew as a party the duty of the Industrial Court ended. It was further submitted that the Minister in referring the trade dispute under s. 26(2) had committed an error of law because the applicants were not union members when the reference was made.

The issues before the Court were whether:

(i) the Industrial Court had jurisdiction to substitute an individual in place of a trade union under s. 29(a) of the Act;

(ii) whether the substitution altered the character of the dispute from one under s. 23 (now s. 26) to that of a reference under s. 20.

Held:

[1] The order of the Minister referring the dispute to the Industrial Court under s. 23 (now s. 26) is merely a vehicle to carry the dispute into the Industrial Court. The Industrial Court is seized with jurisdiction to hear the dispute and s. 29 of the Act may be invoked by the Industrial Court at any time after the reference is made as the situation may warrant provided the order of reference itself is not challenged and remains valid.

[2] At the time the reference was made by the Minister on 13 January 1986 neither the Minister, NUPW, the respondent company nor the applicants were aware that the applicants were no longer NUPW members. The Registrar of Trade Unions' ruling was made on 21 August 1986 that is seven months after the reference was made by the Minister. The respondent company had not challenged the legality of the reference made by the Minister under s. 26(2) in the High Court and unless declared otherwise by the High Court the reference remains valid.

[3] The substitution of the aggrieved workmen as a party in the place of the union does not amount to the Industrial Court's converting a reference under s. 26(2) to one under s. 20(3) of the Act as the cause of action or dispute is the same namely the dismissal or non-employment of applicants by the respondent company.

[4] The word 'party' in s. 29(a) should be interpreted to mean any party to the proceedings before the Industrial Court. The Industrial Court had committed an error of law in interpreting the provisions of the Act which affected its jurisdiction.

[Application allowed and order of certiorari granted.]

Awards referred to:

The Chemical Workers Union of Malaya v. Plastics Sdn. Bhd. Industrial Court (Award No. 57/79) ***(cit)***
NUPW v. Consolidated Plantations Ltd. (Award No. 135/79) ***(cit)***
Len Omnibus Co. Ltd. v. TWU (Award No. 4/72) ***(cit)***

Legislation referred to:

Industrial Relations Act ss. 2, 18(1)(b), 20(1), (3), 26(2), 29, (a)
Trade Unions Act 1959, s. 25A(3), (4)

For the applicants - Sivarasiah; M/s. Zain & Co.
For the respondent - Shahul Hameed Amirudin; M/s. Sri Ram & Co.

[**Ed. Note:** The applicants appeal against the decision of the High Court was heard in the Supreme Court on 9 March 1992 by a coram constituting of Tan Sri Dato' Harun M. Hashim SCJ, Dato' Mohd. Yusof Mohamed SCJ, and Dato' Peh Swee Chin SCJ wherein the appeal was dismissed with costs to the respondent.]

JUDGMENT

Eusoff Chin J:

On 30 August 1985, the respondent issued notices to its employees including the applicants that since they had on 5 July 1985 been allocated new housing units at the respondent's Batu Arang Division, they were required to vacate their old labour lines (condemned by the Health Department) and to move to their new houses by 30 September 1985 or else the respondent would stop providing the facilities to the old labour lines. The applicants and his colleagues refused to move out of the old labour lines. On 1 October 1985 the respondent removed the creche facility, cut off the water supply and stopped the services of the linesweeper at the old labour lines. As a result, the affected employees did not report for

work from 2 October 1985. On 17 October 1985 the applicants were informed by the respondent that their contracts of employment were terminated on the ground that they had not reported for work for more than two consecutive days.

In the trade dispute the applicants were represented by their union, the National Union of Plantation Workers.

Arising out of the non-settlement of the trade dispute, the Minister on 13 January 1986 referred the trade dispute on non-employment of workmen by their employers under s. 26(2) of the Industrial Relations Act for adjudication by the Industrial Court.

Meanwhile the Registrar of Trade Unions had been carrying out his own investigations under s. 25A(4) of the Trade Unions Act 1959. On 21 August 1986, he made a ruling that the applicants had by refusing to go to work, participated in an illegal strike on 2 October 1985. Consequently in accordance with the provisions of s. 25A(3) of that Act, the applicants had ceased to be union members from 2 October 1985.

On 4 May 1987, the union wrote to the Industrial Court to say that it could no longer represent the applicants because they were not its members by virtue of the ruling made in the letter of the Registrar of Trade Unions dated 21 August 1986.

On 13 May 1987 when the case up for hearing in the Industrial Court, the union informed the Industrial Court that it had no objection to its being substituted as a party by the individual workers (applicants). The learned Counsel for the respondent then, submitted that since the trade dispute referred by the Minister under s. 26(2) of the Industrial Relations Act was between the union and the respondent as 'parties', the dispute ceased to exist when the union withdrew as a party, and the duty of the Industrial Court ended there. The learned Counsel further submitted that the Minister in referring the trade dispute under s. 26(2) of the Industrial Relations Act had committed an error of law because the applicants were not union members on 13 January 1986 when the Minister made the reference. He argued that the Industrial Court would be acting out of jurisdiction if it changed the Minister's reference of a trade dispute on the "non-employment" of workmen under s. 26(2) to a reference of dismissal of non-union workmen under s. 20(3) of the Industrial Relations Act.

The Industrial Court considered three of its past awards and one High Court decision on the issue of whether the workmen involved could be substituted as a 'party' in place of the union. They are:

(1) *The Chemical Workers Union of Malaya v. Plastics Sdn. Bhd.* Industrial Court Award No. 57/79;

(2) *NUPW v. Consolidated Plantations Ltd.,* Award No. 135/79;

(3) *Len Omnibus Co. Ltd. v. TWU,* Award No. 4/72; and

(4) *MAS v. Kuppusamy,* High Court OM No. A14 of 1980.

The Industrial Court came to the conclusions that in the first three cases decided by the Industrial Court allowing the change of parties from union to workmen, the definition of the word 'party' was differently worded. The definition of party in s. 2 of the Industrial Relations Act then was :

> "party", with reference to a trade dispute, **means** a trade union of workmen acting for all or any number of its members in the trade dispute, or an employer acting for himself in the trade dispute, or a trade union of employers acting for all or any number of its members in the trade dispute;

On 30 May 1980, the definition of 'party' was amended to read as follows:

> 'party' with reference to any trade dispute, **includes** a trade union of employers representing an employer who is a party to the dispute or a trade union of workmen representing workmen who are parties to the dispute.

The Industrial Court therefore concluded that because of the amendment, a party in relation to a trade dispute, cannot now be the workmen affected, but that they must be represented by a trade union.

As regards the 4th case, that is, *Kuppusamy v. MAS*, the Industrial Court said that:

> this case was also decided (by the Industrial Court) pre-amendment, on 9 February 1980. Here again this case is not on all fours with the case before this Court in facts and in law. In that case, the reference of the Hon'ble Minister was valid and proper when it was made: Kuppusamy was a member of the union and his case was espoused by it. Subsequently, half-way through the Court's hearing of the trade dispute, the union itself was deregistered and ceased to exist. Whereas in our case the union exists but the claimants ceased to be legal members before the reference by the Hon'ble Minister was made.

Having said so, the Industrial Court was of the view

> that with the withdrawal of the union as a party in this dispute of "non-employment" for lack of *locus standi*, the Court ceased to have before it such trade dispute to adjudicate. The reference of "non-employment" by the Hon'ble Minister was made under s. 26(2) of the IRA and this Court cannot in law convert this reference into one under s. 20(3) which is confined solely to reference of dismissals. The two types of reference are based on **different criteria** subsisting in the Hon'ble Minister's mind and are not subject to interchangeability in this Court.

The Industrial Court held that it had no jurisdiction to adjudicate on the reference.

Section 29 of the Industrial Relations Act (before its amendment on 10 February 1989) applicable to this application states:

> Power of the Court.
>
> 29. The Court may, in relation to any trade dispute before it or in relation to any reference to it under s. 20(3) -
>
> (a) order that any party be joined, substituted or struck off;

With respect, I think the Industrial Court had not considered properly the *ratio decidendi* in *MAS v. Kuppusamy*. In that case Hashim Yeop Sani J (as he then was) stated:

> It need not be emphasized again here that the functions of the Industrial Court are to try to receive all disputes referred to it without regard to "technicalities and legal form." The Industrial Court is required by the statute to act according to "equity and good conscience." So what is the real scope of s. 29 of the Act? As stated in the marginal note that section deals with the "powers of the Court" in relation to any trade dispute before it or in relation to any reference made to it. Thus it is clear to my mind that s. 29 confers powers on the Industrial Court in the conduct of its proceedings in all matters on trade dispute within its jurisdiction. In character it is more of a procedural provision.
>
> What was the dispute? The dispute concerned the dismissal of the 2nd respondent. This had not changed on 14 April 1979 when the union was deregistered. The dispute on the dismissal remained unresolved even after 14 April 1979 and in fact remained unresolved on 17 October 1979 when the 2nd respondent applied to be substituted as a party in place of the defunct union.

> Therefore it surely is not right to say that the Industrial Court has no jurisdiction to substitute an individual in place of a trade union under s. 29(a) of the Act. It cannot also be true to say that the substitution altered the character of the dispute from a reference under s. 23 (now s. 26) to that of a reference under s. 20 of the Act.
>
> In my opinion the order of the Minister referring the dispute to the Industrial Court under the s. 23 (or the present s. 26 of the Act) is merely a vehicle to carry the dispute into the Industrial Court. Once the reference is made (and not challenged) the Industrial Court is seized with jurisdiction to hear the dispute. It is also my opinion that the procedural provision of s. 29 of the Act may be invoked by the Industrial Court at any time at all after the reference is made as the situation may warrant **provided** that the order of reference itself is not challenged and remains valid.

Section 20(1) and (3) of the Industrial Relations Act (before its amendment by Act A718 effective on 10 February 1989) stated that if a workmen who **was not** a member of a trade union of workmen considered that he had been dismissed without just cause or excuse he could within 30 days of the dismissal make written representation to the Director General of Industrial Relations to be reinstated in his former employment. The Director General would try to effect a settlement and if he was not successful would notify the Minister of that fact. The Minister at his discretion could refer the dispute to the Industrial Court for an award. The amendment to this section allows a workman whether or not a trade union member to make the representation, and the period of 30 days within which to make the representation has now been abolished.

Where a trade dispute exists, the Minister may at his own motion refer it to the Industrial Court for an award.

A "trade dispute" has been defined under s. 2 of the Industrial Relations Act, as follows:

> "trade dispute" means any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen.

Before the amendment of s. 20(1) of the Industrial Relations Act, where it concerned the dismissal of a workman without just cause or excuse, if the aggrieved workman was not a trade union member, his remedy was to make a complaint under s. 20(1) of the Industrial Relations Act, and the Minister could make the reference under s. 20(3) of the Industrial Relations Act. But if the aggrieved workman was a trade union member, the union under s. 18(1)(b) could take the matter up on his behalf as a trade dispute concerning the non-employment of the workman, in which case the Minister could refer the trade dispute to the Industrial Court under s. 26(2) of the Act. In either case, the cause of action is the same, that is, the dismissal or non-employment of the workman.

It is not disputed that at the time the Minister made the reference on 13 January 1986, the Minister, the union, the respondent and the workmen were not aware that the workmen were no longer union members. The Registrar of Trade Unions' ruling was made on 21 August 1986, that is, seven months after the Minister had made the reference. Before the Industrial Court, the respondent's Counsel had submitted that the reference was void. But I note that the respondent had not challenged the legality of the reference made by the Minister under s. 26(2) in the High Court, and unless declared otherwise by the High Court, the reference remains valid.

The Industrial Court's finding was that if it allowed the substitution of the aggrieved workmen as a party in place of the union, it would amount to the Industrial Court's converting a reference under s. 26(2) to one under s. 20(3) of the Industrial Relations Act. I do not think

so. The cause of action or dispute is the same, that is, the dismissal or the non-employment of the applicant by the respondent. The word 'party' in s. 29(a) should be interpreted to mean any party to the proceedings before the Industrial Court. I say so because notwithstanding that the word 'party' has been defined by s. 2 of the Industrial Relations Act, the opening words of that s. 2 itself state:

> 2. In this Act, **unless the context otherwise requires**: 'party' with reference to ... etc ...

Section 29 of the Industrial Relations Act after its amendment with effect from 10 February 1989 now reads :

> 29. The Court may in any proceedings before it -
>
> (a) order that any party be joined, substituted or struck off,

I find that the Industrial Court had committed an error of law in interpreting the Industrial Relations Act which affected its jurisdiction. I therefore allowed the application and ordered *certiorari* to issue as prayed for by the applicant.

Also found at [1992] 3 CLJ 1410